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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/085,854	02/27/2002	Ronald Dean Smith		1691

7590 06/23/2004
MILLER PATENT SERVICES
2500 DOCKERY LANE
RALEIGH, NC 27606

EXAMINER

BENNETT, GEORGE B

ART UNIT PAPER NUMBER

2859

DATE MAILED: 06/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/085,854

Applicant(s)

SMITH ET AL.

Examiner

G. Bradley Bennett

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 March 2004.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 5-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 5-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 5, 9-11 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Harris in view of Shurtleff and Bateman.
3. Harris discloses the invention substantially as claimed where: **30** is a compartment with angular graduations **66**; member **20** is an indicator needle pivotally suspended that moves according to gravitational forces; and **40** is a viscous fluid, which inherently includes glycerin oil. However, Harris does not disclose a magnetic base as claimed or that the gravitational forces acting on the needle itself to cause it to point in the manner claimed. Shurtleff discloses how a magnetic means **11** may be attached to the base of a slope measurement instrument for the purpose of attaching the instrument to an object to be measured. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use the magnetic base as taught by Shurtleff in conjunction with slope measurement device of Harris for the purpose of attaching the Harris device to an object to be measured. Bateman teaches how a needle **86** can be used such that gravitational forces acting on the needle itself cause the needle to point to the zero position when the instrument is positioned at a zero

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grade position. Therefore, it would have been obvious at the time the invention was made to use a needle as taught by Bateman in conjunction with the device of Harris for the purpose of simplifying the mechanical components of Harris.

4. Claims 6-8, 12-16 and 18-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Harris, Shurtleff and Bateman as applied to claim 5 above, and further in view of Behr.

5. Regarding claims 6, 18, 21 and 22, Harris and Shurtleff disclose the invention substantially as claimed. However, none disclose an adjustable pointer as claimed. Behr discloses an adjustable pointer for use with a measurement instrument for the purpose of indicating specific measurements. Therefore, it would have been obvious at the time the invention was made to use an adjustable pointer as taught by Behr in conjunction with the known device for the purpose of recording a specific measurements in conjunction with the Harris device.

6. Regarding claims 7, 8, 12-16, 19 and 20, Harris, Shurtleff and Behr disclose the invention substantially as claimed. Official Notice is taken that *any* known means can be used for attaching the pointer of Behr to the device of Harris, including the old and well-known wing nut as claimed. Furthermore, the indicator must be attached to the compartment as claimed since it must be attached in a manner that permits it to be located adjacent the indicia of the measuring device. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use the claimed means for attaching the adjustable pointer of Behr to the device of Harris for the

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purpose of allowing a pointer to be fixed at a specific location to indicate a measured slope.

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

8. Applicant's arguments filed 26 MAR 2004 have been fully considered but they are not persuasive. The applicant argues that the previous final action was improper. In response, new rejections have been made which replace the alleged improper previous rejections. Furthermore, the rejection above could have been made in response to the applicant's previous amendment. Accordingly, **THIS ACTION IS MADE FINAL**.

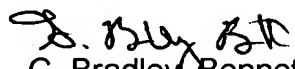
Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to G. Bradley Bennett whose telephone number is 571.272.2237. The examiner can normally be reached on M-TH 8:30-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diego F.F. Gutierrez can be reached on 571.272.2245. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


G. Bradley Bennett
Primary Examiner
Art Unit 2859

gbb
22 JUN 2004